

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

HORACE THOMAS,

Plaintiff,

v.

M.D. MERLE BRUCE,

Defendant.

Case No. 2:14-cv-619-MMD-CWH

ORDER

I. DISCUSSION

On June 3, 2014, this Court entered a screening order and found that Plaintiff had failed to state a colorable Eighth Amendment claim because he alleged that Dr. Bruce had committed medical malpractice. (Dkt. no. 6 at 4.) The Court dismissed the complaint with prejudice as amendment would be futile. (*Id.*)

Plaintiff appealed. (Dkt. no. 9.) The Ninth Circuit issued a memorandum disposition and held that, although this Court had properly dismissed Plaintiff's complaint for failure to state a claim, the Court abused its discretion by dismissing the action without providing Plaintiff an opportunity to amend. (Dkt. no. 14 at 2.) The Ninth Circuit vacated the judgment and remanded with instructions to provide Plaintiff an opportunity to file an amended complaint. (*Id.*)

The Court grants Plaintiff leave to file an amended complaint. Plaintiff is granted leave to file an amended complaint to cure the deficiencies of his Eighth Amendment

1 claim. If Plaintiff chooses to file an amended complaint he is advised that an amended
2 complaint supersedes the original complaint and, thus, the amended complaint must be
3 complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d
4 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the original
5 complaint is irrelevant; an amended pleading supersedes the original”); see also *Lacey*
6 *v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed
7 with prejudice, a plaintiff is not required to reallege such claims in a subsequent
8 amended complaint to preserve them for appeal). Plaintiff’s amended complaint must
9 contain all claims, defendants, and factual allegations that Plaintiff wishes to pursue in
10 this lawsuit. Moreover, Plaintiff must file the amended complaint on this Court’s
11 approved prisoner civil rights form and it must be entitled “First Amended Complaint.”

12 The Court notes that if Plaintiff chooses to file an amended complaint, Plaintiff
13 shall file the amended complaint within thirty (30) days from the date of entry of this
14 order. If Plaintiff chooses not to file an amended complaint, the Court shall dismiss this
15 case with prejudice, for failure to state a claim.

16 **II. CONCLUSION**

17 For the foregoing reasons, it is ordered that Plaintiff is granted leave to file an
18 amended complaint.


19 It is further ordered that if Plaintiff chooses to file an amended complaint, Plaintiff
20 shall file the amended complaint within thirty (30) days from the date of entry of this
21 order.

22 It is further ordered that the Clerk of the Court shall send to Plaintiff the approved
23 form for filing a § 1983 complaint, instructions for the same, a copy of his original
24 complaint (dkt. no. 7), and a copy of this Court’s screening order (dkt. no. 6). If Plaintiff
25 chooses to file an amended complaint, he must use the approved form and he shall
26 write the words “First Amended” above the words “Civil Rights Complaint” in the
27 caption.

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1 It is further ordered that if Plaintiff fails to file an amended complaint, this action
2 will be dismissed with prejudice for failure to state a claim.

3 DATED THIS 3rd day of February 2015.

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MIRANDA M. DU
6 UNITED STATES DISTRICT JUDGE
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